BOOK REVIEWS

RESERVATIONS TO TREATIES: THEIR EFFECT, AND THE PROCEDURE IN REGARD THERETO. By David Hunter Miller, Special Assistant in the Department of State. 1919. pp. 171.

This is a careful exposition of the practice pursued by the government of the United States in agreeing to an international treaty subject to reservations. The author undertakes to show that in every case of a real reservation the reservation became part of the final act prior to or at the time when that act was legally perfected; in other words, it was accepted by the other party or parties to the treaty. Generally, the reservation is made by the Senate; the President incorporates it in the instrument of ratification, and proper acknowledgment is made by the other party, either by its instrument of ratification or by exchange of notes, or in the protocol of exchange. The effect is, as Mr. Miller points out, that the Senate merely initiates an amendment to the treaty which the other party agrees to. One-sided declarations not acted on by the other party occur now and then with reference to matters exclusively of domestic cognizance and not concerning the other party; they are therefore not real reservations. The author (page 89) mentions the case of an explanation filed by Russia in connection with a treaty with the United States in 1824, which was not submitted to the Senate, and which the American government simply received as an interpretation, placed upon the treaty by the Russian government. Clearly, Russia could not have founded any claims upon this explanation, although later on the United States used it in support of its own contentions in the Bering Sea controversy. Where a convention leaves it open to others not parties to the original act to adhere to it by subsequent declaration, it may occur that such an adhesion is encumbered by a reservation; that simply means that the adhesion counts for what it is worth, and no question of international faith is involved.

For some reason, the author fails to comment on the Treaty with the New York Indians proclaimed by the President April 4, 1840, which was the subject of a decision by the Supreme Court (170 U. S. 1 (1898)). Here it appears that the Senate had passed a resolution qualifying its assent to the treaty, which did not appear in the President's final proclamation, and which apparently was not brought to the notice of the Indians. The Supreme Court held that the resolution was merely directory to the President and did not affect the treaty.

The question of practical interest in connection with the entire subject is the application of the conclusions reached, to possible reservations made by the Senate in consenting to the Treaty of Versailles. Mr. Miller says that such reservations would in effect constitute new proposals to be submitted to the other parties to the treaty.

However, he concludes the entire exposition with the following statement:

"The distinction is, therefore, highly technical, and is this: A condition which is made a part of the instrument of ratification must be recited therein. A condition precedent to the exchange or deposit of the instrument of ratification need not be so recited.

"To state the case supposititiously in regard to the Treaty with Germany, if the conditions of the Senate resolution were that certain understandings should be made part of the Act of Ratification they would have to be recited in the instrument of ratification and would require the consent of the other signatory Powers. If, on the other hand, the resolution required that the instrument of ratification should not be deposited until certain *notes* had been exchanged with three of the Great Powers stating an 'understanding' regarding

the Treaty, the instrument of ratification might be executed without containing any reference to the condition, and upon the fulfillment of the condition might be deposited at Paris.

"Another possibility which may be noticed is that the Senate resolution might contain *recitals*, as did the resolution with Japan of 1911. Such recitals are not strictly conditions at all, and consequently may be omitted, as in the case mentioned they were omitted, from the instrument of ratification.

"Recitals of such a character, even if declaratory in their nature, would not, by means of our instrument of ratification, be formally communicated to the other Parties signatory to the Treaty, but, as a matter of fact, they would control our policy in the future and as they would in reality be known to all the other Powers they would have the same result in the future as if formally communicated.

"The precise form, therefore, of the resolution adopted by the Senate regarding the ratification of the Treaty of Peace with Germany is of the utmost importance. If the resolution is drafted so as to require fresh negotiations, delays and difficulties will inevitably result. If, on the other hand, proper attention is given to form, the substantial result reached by reservations of an interpretative character can be obtained without involving the postponement of the formal state of Peace."

In the case cited of Japan, 1911, the Japanese government formally expressed its concurrence in the Protocol of Exchange (page 63). The reservation thus appears to have been formally communicated and noted. What importance, then, attaches to the author's statement that recitals "would not, by means of our instrument of ratification, be formally communicated to the other Parties"? The truth is that in accordance with previous practice they would have to be not only communicated in some way but also accepted, or, if either not communicated or not accepted, would be misleading, and possibly not honorable. For, though not communicated, they might nevertheless control our policy in the future. The other party, suffering from the terms of the treaty, would not be heard to contend in an American court, that there was no treaty in force, but would be told that the reservation was legally of no account; on the other hand, the government of the United States would as a matter of fact have the benefit of any reservations of a *political* character to which the other party had not assented; for these reservations by their very nature could never become matter of judicial cognizance, and would naturally control the diplomatic action of the government. In a treaty which would be the basis of pecuniary claims running into many millions, all the benefits would go to the United States, which at its option would escape burdens of a political nature.

Mr. Miller's exposition seems to have been printed without a responsible publisher. It makes very difficult reading, — no orderly arrangement, nothing to distinguish text from comment, no headings, no index — a poor piece of bookmaking. The value of the material is seriously impaired by this defect.

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INTERNATIONAL LAW. By Sir Frederick Smith. Fifth edition, revised and enlarged by Coleman Phillipson. New York: E. P. Dutton & Company. 1918. pp. 456.

As the author's preface says, this book "began its existence as a volume in Dent's Primer Series in 1899." The author was admitted to the bar in that year. When the present edition was prepared, he was Attorney General of Great Britain. He is now Lord Chancellor, with the title of Baron Birkenhead. As he has long been too busy to rewrite his book, the fifth edition, like the